(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR.

Cr. Appeal 96 of 2001.

APPELLANT (In Jail) : Ayati aged about 45 years,
Wife of Foka,
resident of Badampara,
Chitrakoot,
P.S. Lohandiguda,
Distt :BASTAR.

(371)

Received on 12.1.2001
by Shri Ku. A. Sinha Advocate
R. to AR

VERSUS

RESPONDENT : The State of Chhattisgarh
Through P.S. Lohandiguda.

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

(14)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..CRA.No.96. सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB:- Hon'ble Shri L.C. Bhadoo, Ag. C.J. &

Hon'ble Shri Sunil Kumar Sinha, J.

29-1-2007:-

Ms. Nirupama Bajpai, counsel for the appellant.

Mr. G.K. Beriwal, Deputy Advocate General with Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, Ag. C.J.

This appeal is directed against the judgment of conviction and order of sentence dated 10-11-2000 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur, in S.T. No.17/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced her to undergo imprisonment for life & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution is that on 22-10-99 at about 10 a.m. accused/appellant Ayati attacked her husband Foka with axe, as a result of which he succumbed to the injuries. Thereafter, she called Mangal (PW-1) who lodged report (Ex.-P/1) in the Police Station Lohandiguda to the effect that at about 12 noon he was at his residence. Ayati came and informed him that in connection with money some quarrel took place between her and Foka, her husband, ~~in that connection~~, she attacked Foka with axe on the right side of chest, he is lying on the ground. He went to the house

P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of accused and saw that Foka was lying on the ground, blood was oozing out of the injuries. He called other villagers.

Receiving this report, Station House Officer, Police Station registered crime under Section 307 of the IPC, left for scene of occurrence, prepared site plan (Ex.-P/2). In the meantime, Foka was taken to the hospital, at about 7.15 p.m. he succumbed to the injuries in the hospital. Therefore, Investigating Officer prepared inquest (Ex.-P/3) on the body of Foka. He took into possession plain soil & blood stained soil from the place of occurrence under Ex.-P/4. Dr. Birendra Thakur (PW-7) examined injuries and prepared injury report Ex.-P/5-A. After the death of Foka, postmortem was conducted in the Primary Health Centre, Lohandiguda, but the doctor has not been examined.

After completion of the investigation, charge-sheet was filed against the accused in the Court of C.J.M., Jagdalpur, who in turn, committed the case to the Sessions Jude, Jagdalpur from where learned 3rd Additional Sessions Judge received the case on transfer for trial.

Prosecution in order to establish the charge against the accused examined 7 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which she denied material appearing against her in the prosecution evidence and stated that she is innocent and has been implicated in a false case.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned Additional Sessions Judge after hearing argument of counsel for respective parties, convicted and sentenced the accused/appellant as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant argued that the accused made extra judicial confession before PW-1 Mangal, PW-2 Sonaru, PW-3 Bhursu and PW-4 Gajju, but from the evidence of these witnesses, it is not clear that the accused made extra judicial confession voluntarily involving herself in the crime in question. From the cross-examination of these witnesses, it has come on record that accused namely Ayati has stated that when they were quarrelling and trying to snatch axe, in that process, axe hit her husband and he died. Therefore, offence under Section 302 of the IPC was not made out.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused evidence of these witnesses. PW-1 Mangal, in examination-in-chief, has stated that about 4 months back Ayati, wife of the deceased came to him and said that there was quarrel between her and her husband Foka in connection with money, in that connection, she attacked Foka with axe which hit on the right side of chest. In cross-examination, he has stated that he himself has not seen the accused assaulting the deceased. However, the accused disclosed to him that there was some quarrel in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

connection with money, they were trying to snatch axe, in that process, the deceased sustained injuries on the chest. In para-5 of cross-examination, he has stated that axe was of the deceased. Similar is the evidence of PW-2 Sonaru, who has stated in cross-examination that Ayati disclosed to him that she demanded money from Foka which was not given by him, therefore, there was some quarrel between the two, in that process, while trying to snatch axe, same hit on the chest of Foka and he sustained injuries. Similar is the evidence of PW-3 Bhursu. PW-4 Gajju has stated that he was informed by Mangal, not by Ayati.

Therefore, from the above evidence of these witnesses, prosecution has not been able to establish that the accused attacked the deceased with axe with intention to cause death or she attacked the deceased with axe having knowledge that by attacking with axe, she is likely to cause death. However, from the evidence, it is proved that the accused was trying to snatch axe, being deadly weapon, in that process, the deceased sustained injuries on the right side of chest, which proved fatal, Foka died in the evening as a result of injuries sustained by him, therefore, act of the accused comes under rash and negligent, as the axe being deadly weapon, when the accused and the deceased were quarrelling, the accused was trying to snatch axe, which hit on the chest of Foka, which was a proximate and sufficient cause for the death of Foka, therefore, Foka died on account of rash and negligent act of the accused, as such, offence under Section 302 of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	**the I.P.C. was not made out against the accused. On facts, offence under Section 304-A of the IPC was made out against the accused.** **In the result, the appeal is partly allowed. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, she is convicted under Section 304-A of the IPC and sentenced to undergo R.I. for 2 years. The accused/appellant is stated to be in custody since 24-10-99 thereby she has already served out the sentence, as such, she be released forthwith, unless required to be detained in any other case.** **Sd/-** **Ag. Chief Justice**	**Sd/-** **Sunil Kumar Sinha** **Judge**

P.T.O.